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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,820	11/21/2003	Alexander Miller	4452-587	1340
27799	7590	08/30/2005	EXAMINER	
COHEN, PONTANI, LIEBERMAN & PAVANE			WILLIAMS, THOMAS J	
551 FIFTH AVENUE				
SUITE 1210			ART UNIT	
NEW YORK, NY 10176			PAPER NUMBER	
3683				

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/718,820	MILLER ET AL.
Examiner	Art Unit	
Thomas J. Williams	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 28 July 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-11 and 15 is/are rejected.

7)  Claim(s) 16 and 17 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 22 March 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/7/04:10/12/04

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## DETAILED ACTION

1. Acknowledgment is made in the receipt of the oath filed March 22, 2004, the information disclosure statements filed June 7, 2004 and October 12, 2004.
2. Applicant's election of Species/Group 3 in the reply filed on July 28, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-11 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,767,010 to Miller et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Re-claim 1, Miller et al. disclose a spring strut unit comprising: a cylinder; a chamber 13 is formed around the cylinder, the chamber is partially filled with an initially formable material; a spring plate 3 has a sleeve section 15 fitted around the cylinder, the formable material in the solid state will transmit supporting forces; the solidified formable material can encase part of the sleeve section, see figure 3, and as such is interpreted as a means for preventing rotation of the spring plate (see column 2 lines 61-64, see also figure 2 and column 3 lines 16-17, the moldable material is intended to positively lock the sleeve section in position).

Re-claims 2-4, see figure 1.

Re-claims 5 and 9, engagement elements 21 are located on the sleeve section 15, see figure 2.

Re-claims 6 and 15, the support ring 5 is circumferentially limited, furthermore, the ring does engage the spring plate and receives the moldable material, see figures 1 and/or 3, and is therefore broadly interpreted as having an engagement profile.

Re-claim 7, the chamber is broadly interpreted as a pocket.

Re-claim 8, the pocket or chamber extends below and edge of the support ring.

Re-claim 10, see figure 1, the ring is welded to the cylinder, the bottom portion of the chamber is interpreted as an engagement profile, since it will engage the moldable material.

Re-claim 11, see port 17.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-4, 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 85 10 058.

Re-claim 1, DE '058 teaches a spring strut unit, comprising: a cylinder, a chamber formed around the cylinder (see figures 2-5) one embodiment teaches a ring 11 disposed in the chamber, the ring is interpreted as formed material and is used to augment the height of the spring plate; a spring plate 3 has a sleeve 4, the ring will transmit supporting forces.

Furthermore, DE '058 teaches a means for preventing rotation of the spring plate, such as radial projection 7 that interacts with recess 8 (figure 2) and pin 12 (figure 5).

However, DE '058 fails to clearly teach the anti-rotation feature utilized in the embodiment illustrated in figure 4. It would have been obvious to one of ordinary skill in the art

to have provided the device of figure 4 of DE '058 with an anti-rotation feature as taught by DE '058, thus reducing wear between the spring plate and support ring by preventing unwanted rotation.

Re-claims 2-3, see figure 4.

Re-claim 4, the opening at the top will receive the ring element 11.

Re-claims 6-8, figure 4 as modified by figure 2 or figure 5 meets the claim limitations, the recess 8 is a pocket.

Re-claim 10, see figures 2-5, note weld 9.

#### *Allowable Subject Matter*

8. Claims 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Benya et al., Tanabe et al., and Sydekum et al. each teach various engagement profiles between a spring plate and support ring, wherein the profile has at least one radial projection.

10. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, can be reached at 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

August 24, 2005

THOMAS WILKINSON  
PATENT EXAMINER

Thomas Wilkinson

Art 3683

8-24-05